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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

HARRY PANKEY,

Petitioner,

v.

ORDER

DON MILLS,

Civil No. 07-1878-PK

Respondent.

HAGGERTY, District Judge:

Magistrate Judge Papak referred to this court a Findings and Recommendation [30] in this matter. The Magistrate Judge recommends that petitioner Harry Pankey's Petition for Writ of Habeas Corpus [2] be denied and dismissed with prejudice. Petitioner filed timely objections, but respondent did not file a response. For the following reasons, this court adopts the Findings and Recommendation.

STANDARDS

When a party objects to any portion of a Findings and Recommendation, the district court must conduct a *de novo* review. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach. Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

DISCUSSION

Petitioner brings this habeas corpus action pursuant to 22 U.S.C. § 2254. The Findings and Recommendation contains a factual summary outlining the history of this matter, and the facts will not be repeated here. The Findings and Recommendation found that petitioner's sentence was not imposed in violation of the United States Constitution and that petitioner was not denied his right to effective assistance of counsel. Findings and Recommendation at 11, 14.

Petitioner raises three objections to the Findings and Recommendation: (1) the Magistrate's summary disposition of his claims, (2) the retroactive application of *Blakely v. Washington*, 542 U.S. 296 (2004), and (3) that petitioner's trial counsel was ineffective for failing to anticipate and advise petitioner of *Blakely*. This court has performed a *de novo* review of petitioner's claims and to the extent that petitioner relies on his original briefing, this court will not repeat the extensive discussion of petitioner's claims provided in the Findings and Recommendations.

Petitioner objects to the Findings and Recommendation based on the "Magistrate Court's summary disposition of the 'unargued claims' as 'not traversed.'" Petitioner's Objections at 2. Petitioner argues that 28 U.S.C. § 2248 does not provide a basis for the court to summarily

dismiss petitioner's claim. Petitioner is correct in his reading of § 2248, however, the Findings and Recommendation was not based on petitioner's failure to argue his claims set forth in Grounds Two and Three. Although the Findings and Recommendation found that petitioner did not provide argument to support his claims, the court nevertheless reviewed the entire record to determine the merits of petitioner's claim. Findings and Recommendation at 4.

After reviewing the entire record, the Findings and Recommendation noted that while petitioner claimed that the trial court incorrectly imposed consecutive sentences and that his counsel failed to object to the imposition of consecutive sentences, the trial court had actually ordered petitioner's sentences to run concurrently. Therefore, the Findings and Recommendation found petitioner's claims related to the imposition of consecutive sentences to be without merit.

This court also concludes that the Findings and Recommendation adequately dealt with petitioner's constitutional arguments regarding the imposition of his sentence and his assistance of counsel such that they do not merit additional analysis here. This court's *de novo* review of the record supports adoption of the Findings and Recommendation in its entirety.

CONCLUSION

For the foregoing reasons, the court adopts the Findings and Recommendation [30]. Petitioner Harry Pankey's Petition for Writ of Habeas Corpus [2] is DENIED and this case is DISMISSED with prejudice.

IT IS SO ORDERED.

DATED this 9 day of June, 2009.



CANCER L. HAGGERTY
United States District Judge